deliveries. *Held,* such a breach of the contract as justified the seller's refusal to make further deliveries. *Auer & Twitchell* v. *Robertson Paper Co.* (Vt., 1920), 111 Atl. 570.

It is settled by the weight of authority in this country that in contracts for the sale of commodities to be delivered in installments, the price to be paid on delivery or at fixed periods, default in payment of one of the installments, which is not waived by the seller, justifies the other party in rescinding the contract and refusing to make further deliveries. *Harris Lumber Co.* v. *Wheeler Lumber Co.,* 88 Ark. 491; *Baltimore* v. *Schaub Bros.,* 96 Md. 534; *Ross-Meehan Foundry Co.* v. *Royer Wheel Co.,* 113 Tenn. 370. Generally the same rules apply where there is a failure to deliver in accordance with the terms of the contract. *Cleveland Rolling Mills* v. *Rhodes,* 121 U. S. 255. *Morrison* v. *Leiser,* 77 Mo. App. 95. Though some cases have made a distinction between defaults by the buyer and defaults by the seller. *Norrington* v. *Wright,* 115 U. S. 188. The minority rule, which is that of the English courts, holds that such a default in payment will not justify rescission by the seller unless there was an intent on the part of the buyer to repudiate the whole contract. *West* v. *Betchell,* 125 Mich. 144 (containing an exhaustive review of the English authorities); *Beatty* v. *Howe Lumber Co.,* 77 Minn. 272; *Meyer* v. *Wheeler,* 65 Ia. 390. The leading English case is *Mersey Steel & Iron Co.* v. *Naylor,* 9 Q. B. Div. 648, emphasizing the "evincing of an intention no longer to be bound by the contract." Whatever may be the merits of these conflicting views, the result reached in the instant case seems entirely satisfactory. The contract clearly contemplated the prompt payment of each invoice as it fell due, and the buyer's arbitrary refusal to pay his back installment until the next delivery had been made would seem to be a sufficient justification for the plaintiff's withdrawal from the contract.

CONTRACTS—IDENTITY OF CONTRACTING PARTY A MATERIAL ELEMENT.—Plaintiff, desirous of attending the opening performance of a play, applied twice for a ticket. Because of some past trouble between him and the theatre management the applications were refused. Plaintiff thereupon secured a ticket through the agency of one Pollock, to whom the management was willing to sell. When plaintiff presented himself at the theatre on the evening of the performance the attendants, acting upon the direction of the defendant, the managing director of the company operating the theatre, refused him admission, offering to refund the purchase price. In action for damages for wrongfully and maliciously inducing the company to break its contract, *held* (1) plaintiff had no contract, and (2) *semble,* even if he did, defendant, a servant of the company, having acted *bona fide* within the scope of his authority, could not be held liable. *Said* v. *Butt,* [1920] 3 K. B. 497.

As to rights of ticket holders expelled from theatre seats, see *Hurst* v. *Picture Theatres, Ltd.* [1915], 1 K. B. 1. In the principal case it seems to be assumed that the *Hurst* case applies to ticket holders refused admission as well as to those ejected. See discussion of the *Hurst* case in 13 MICH. L. REV. 401. The effect as to the formation of a contract or completion of a sale of a mistake as to the identity of the other party to the transaction is

discussed in 18 MICH. L. REV. 709. See *Cunday* v. *Lindsay*, 3 App. Cas. 459; *Phillips* v. *Brooks* [1919], 2 K. B. 243; *Edmunds* v. *Transportation Co.*, 135 Mass. 283; *Rodliff* v. *Dallinger*, 141 Mass. 1; 35 LAW QUART. REV. 288. In arriving at its conclusion that there was no contract the court applies the principle laid down by Pothier in TRAITÉ DES OBLIGATIONS, s. 19. "Whenever the consideration of the person with whom I am willing to contract enters as an element into the contract which I am willing to make, error with regard to the person destroys my consent and consequently destroys the contract," etc. Essentially the same principle is laid down in FRY ON SPECIFIC PERFORMANCE, Sec. 229, and has been recognized and applied in many English cases. McCardie, J., however, confessed "that the question is one of difficulty," and therefore gave consideration to the other point involving the limits of the rule of *Lumley* v. *Gye*, 2 E. & B. 216, when sought to be applied to a case wherein the defendant was the agent of the party breaking the contract. The conclusion on this point would seem to be equally sound with that on the first.

COSTS—ALLOWANCE OF COSTS FOR BRIEF EXCESSIVE IN SIZE.—On affirmance of a judgment where the respondent filed a brief of forty-six printed pages, quoting extensively from the testimony found in the abstract, *held*, that respondent be allowed costs for brief not in excess of twenty pages, as this was, in the judgment of the court, sufficient in which to make a statement of facts and to discuss the legal questions involved. *Fossali* v. *Gardella* (Utah, 1920), 193 Pac. 641.

The courts have consistently held to the theory that costs are given as a reimbursement for necessary expenses and not as an instrumentality to make it perilous for a party to come into court, and for this reason the courts seek to keep the costs as small as possible. Where the transcript of a record is unnecessarily long the losing party should not be required to bear the burden. *Stephenson* v. *Chappell*, 12 Tex. Civ. App. 296. The losing party is not to be assessed with the costs of a brief that is unnecessarily prolix. *Cobb* v. *Hartenstein*, 47 Utah 174. In *Wilson* v. *Pontiac Railway Co.*, 57 Mich. 155, the bill of exceptions was too voluminous and the costs of the losing party were reduced. Just what makes a record or brief too prolix is largely a question to be determined upon the circumstances surrounding the particular case. The Michigan court rules provide that the record on appeal shall be reduced to narrative form rather than be reported by question and answer, and where the record is not made in narrative form, when such form is suitable, the costs will be reduced. *Ruttle* v. *Foss*, 161 Mich. 132. The Wisconsin court rules provide for an abstract of necessary parts of a record on appeal, and where unnecessary parts are included in the abstract the costs will be reduced. *Willey* v. *Lewis*, 113 Wis. 618. Testimony of witnesses on which no question was raised below is unnecessary matter. *Geo. W. Roby Lumber Co.* v. *Gray*, 73 Mich. 363. Printing a motion for a new trial when such motion is not reviewable is unnecessary matter for which no costs will be allowed. *Nederland Ins. Co.* v. *Hall*, 86 Fed. 741. Where the brief contained large reprints of the abstract, the costs were reduced. *Steele* v. *Crabtree*,